251

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DRAFT REPORT OF THE COMMISSION

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CONTENTS*

Chapter		Paragraphs	Page
V.	VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS . .	1 - 16	2

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* E/CN.4/1994/L.10 and addenda contain the chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Economic and Social Council are contained in document E/CN.4/1994/L.11 and addenda.

GE.94-11372 (E)

V. VIOLATIONS OF HUMAN RIGHTS IN SOUTHERN AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS

1. The Commission considered item 5 of the provisional agenda concurrently with items 6 and 14 (see chaps. VI and XIV) at its 8th to 12th meetings, from 4 to 8 February, and at its 31st meeting, on 18 February 1994. 1/

2. The Commission had before it the following documents:

Situation of human rights in South Africa: Note by the Secretary-General (A/48/525);

Interim report of the Ad Hoc Working Group of Experts on southern Africa prepared in accordance with Commission on Human Rights resolution 1993/9 (E/CN.4/1994/15).

3. At its 8th meeting, on 4 February 1994, the Chairman-Rapporteur of the Ad Hoc Working Group of Experts on southern Africa, Mr. Mijuin Leliel Balanda, introduced the Ad Hoc Group's interim report.

4. In the general debate on item 5, statements 3/ were made by the following members of the Commission: Australia (11th), Austria (8th), Bangladesh (11th), Brazil (8th), Bulgaria (11th), Canada (8th), Chile (10th), China (10th), Cuba (11th), Cyprus (11th), Finland (on behalf of Denmark, Finland, Iceland, Norway and Sweden) (11th), Hungary (9th), India (11th), Indonesia (10th), Japan (10th), Kenya (11th), Malaysia (10th), Malawi (11th), Mauritania (9th), Nigeria (9th), Pakistan (11th), Republic of Korea (11th), Russian Federation (10th), Syrian Arab Republic (11th), Sudan (9th), Tunisia (on behalf of the African Group) (9th), United States of America (11th), Venezuela (11th).

5. The Commission also heard statements by the observers for: Algeria (11th), Egypt (12th), Greece (on behalf of the European Union and its member States) (8th), Morocco (10th), Senegal (11th), Tanzania (11th), Zimbabwe (10th).

6. The observer for the African National Congress (12th) and the observer for the Pan Africanist Congress of Azania (8th) made statements.

7. The Commission also heard a statement by the observer for the United Nations Volunteers programme (10th).

8. The Commission also heard statements by representatives of the following non-governmental organizations: African Association of Education for Development

(12th), Amnesty International (9th), International Commission of Jurists (10th), International Confederation of Free Trade Unions (9th).

9. At the 12th meeting, the Chairman-Rapporteur of the Ad Hoc Working Group of Experts on southern Africa, Mr. Mijuin Leliel Balanda, presented its final comments.

10. At its 31st meeting, the Commission took up consideration of the draft resolution submitted under agenda item 5.

11. On 14 February 1994, a draft resolution (E/CN.4/1994/L.12) had been submitted by the following countries: Algeria*, Bangladesh, Barbados, Cameroon, China, Cuba, Democratic People's Republic of Korea*, Ethiopia*, Gabon, Ghana*, Indonesia, Iran (Islamic Republic of), Iraq*, Kenya, Lesotho, Libyan Arab Jamahiriya, Madagascar*, Malawi, Malaysia, Mauritania, Myanmar*, Nigeria, Rwanda*, Senegal*, Sudan, Syrian Arab Republic, Togo, Tunisia, United Republic of Tanzania*, Zambia* and Zimbabwe*. The draft resolution read as follows:

"The Commission on Human Rights,

Recalling its resolutions 1989/5 of 23 February 1989, 1990/26 of 27 February 1990, 1991/21 of 1 March 1991, 1992/19 of 28 February 1992 and 1993/9 of 26 February 1993,

Recalling the Declaration on Apartheid and its Destructive Consequences in Southern Africa, adopted by the General Assembly in resolution S-16/1 of 14 December 1989, and the need for the full implementation of its provisions,

Recalling also the report of the Special Committee against Apartheid (A/48/22), the fourth report of the Secretary-General on progress made in the implementation of the Declaration (A/48/691), as well as the reports of the Secretary-General on the coordinated approach by the United Nations system on the questions relating to South Africa (A/48/467 and Add.1) and on the concerted and effective measures aimed at eradicating apartheid (A/46/499),

Having examined the interim report of the Ad Hoc Working Group of Experts on southern Africa (E/CN.4/1994/15),

Welcoming the positive political developments that have taken place within the framework of the resumed multi-party negotiations providing for

the holding of elections on 27 April 1994 and the establishment of the Transitional Executive Council, the finalization of the Constitution

for the Transitional Period and the subsequent measures to create the Independent Electoral Commission and the Independent Broadcasting Authority,

Also welcoming the endorsement by the parties in the multi-party negotiations of the Constitution for the Transitional Period and the Electoral Bill,

Noting with satisfaction that in the Constitution for the Transitional Period cognizance has been taken of the large number of international instruments in respect of human rights,

Noting that while positive measures have been taken by the Government of South Africa, including the repeal of some major apartheid laws and the revision of the security legislation, important obstacles to the achievement of a climate conducive to the exercise of free political activity still remain,

Noting also that while positive steps have been taken by the Government of South Africa towards changing the racial education system, many obstacles still persist,

Gravely concerned that persistent violence continues to threaten and to undermine the process of peaceful change through peaceful elections due to take place on 27 April 1994,

Stressing the need to strengthen and reinforce the mechanisms set up in South Africa under the National Peace Accord, and emphasizing the need for all parties to cooperate in combating violence, exercising restraint and taking part in the forthcoming elections,

Welcoming the adoption of part I, paragraph 16 and part II, paragraph 19 of the Vienna Declaration and Programme of Action by the World Conference on Human Rights in June 1993 in which the World Conference welcomed the progress made in dismantling apartheid and deplored the continuing acts of violence aimed at undermining the quest for a peaceful dismantling of apartheid,

Welcoming also the enhanced attention given by the international community to the question of violence in South Africa and especially the deployment in South Africa of observers from the United Nations, the Organization of African Unity, the Commonwealth and the European Union to

further the purposes of the National Peace Accord and the forthcoming elections,

Welcoming the positive development of granting citizenship to the inhabitants of the so-called "homelands", while noting that reforms aimed at incorporating them in the legal, political and administrative framework of South Africa have yet to be fully implemented,

Concerned that detention without charge remains possible in law, for example under sections 29 and 50 of the Internal Security Act, as well as under the Public Safety Act,

Stressing the importance of the powers exercised by the Minister of Justice and Order to declare unrest and to impose emergency regulations being subjected to control by the Transitional Executive Council,

Deeply concerned that certain right-wing parties and/or the Freedom Alliance and some territories have threatened to boycott the forthcoming elections,

Gravely disturbed at the socio-economic inequalities in South Africa and at the accumulated negative impact of apartheid on the social, economic and cultural rights of the majority of the people of South Africa, with particularly harmful effects on women and children,

Welcoming the successful negotiations between the Government of South Africa and the main parties concerned aimed at working out modalities for a non-racial, democratic constitution and the creation of the Transitional Executive Council,

Recognizing the important role the international community and the Centre for Human Rights could play in assisting the new Government and the people of South Africa in overcoming the legacy of apartheid and promoting respect for all human rights, including civil, cultural, economic, political and social rights,

1. Takes note of the interim report of the Ad Hoc Working Group of Experts on southern Africa, and commends the Working Group for the updated documentation of the situation of human rights in South Africa;

2. Reaffirms its support for the legitimate struggle of the South African people for the total eradication of apartheid through peaceful

means and their right to establish a non-racial, democratic system which is consistent with the International Bill of Human Rights;

3. Calls upon the South African authorities to exercise effectively their responsibility to maintain law and order, to stop the violence, to prosecute its perpetrators and to protect all citizens, irrespective of their political affiliation;

4. Also calls upon all parties to refrain from further acts of violence;

5. Strongly urges the Government of South Africa to implement fully the recommendations of the Commission of Enquiry into Public Violence and Intimidation (the Goldstone Commission) and to cooperate with that Commission with a view to carrying out further investigations into the functioning and operation of the security forces and other existing armed units;

6. Commends the Secretary-General for the measures taken to address areas of concern relating to the elections scheduled for 27 April 1994, and invites him to accelerate contingency planning for the role of the United Nations;

7. Supports the recommendations of the Secretary-General for the deployment of observers in South Africa to further the purposes of the National Peace Accord, and urges him to continue to address all the areas of concern noted in his reports which fall within the purview of the United Nations;

8. Urges all parties urgently to implement the agreement to grant a general unconditional amnesty to all those sentenced for anti-apartheid activities which are regarded as politically motivated;

9. Appeals to the international community to assist and enhance the role of humanitarian and human rights groups in extending assistance to victims of apartheid and released political prisoners and in monitoring the situation of human rights in South Africa;

10. Urges the South African authorities to expedite the legal and administrative measures to abolish speedily and unconditionally all the remaining "homelands" and the "bantustan system" and reincorporate them in South Africa, and to ensure that the populations in those territories can

freely participate in the elections and that all political parties will be able to conduct election campaigns without fear of intimidation;

11. Also urges the South African authorities to ensure that no parties are permitted to disrupt the democratic process leading to the elections scheduled for 27 April 1994 and to ensure that an adequate number of electoral booths are installed throughout the territory of South Africa;

12. Further urges the South African authorities to address seriously and urgently the problem of landlessness and the gross inequalities in land ownership in order to create an atmosphere of lasting stability in South Africa;

13. Urges once again the South African authorities to repeal the remaining discriminatory apartheid laws, introduce the necessary legal and administrative measures to correct entrenched socio-economic inequalities and implement and enforce without delay that legislation in the areas of education, health, housing, social welfare and domestic and farm work;

14. Invites the new Government of South Africa to adopt and ratify the important international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in addition to those it has already signed;

15. Calls for the replacement of the present racial education system with a non-racial education system;

16. Calls upon the international community to support through appropriate measures the fragile and critical process of transition under way in South Africa;

17. Reiterates the call to all Governments to observe fully the mandatory arms embargo and the request to the Security Council to continue to monitor effectively the implementation of the embargo, as decided in Security Council resolutions 418 (1977) of 4 November 1977, 558 (1984) of 13 December 1984 and 591 (1986) of 28 November 1986;

18. Urges all parties in South Africa, including those which did not participate fully in the multi-party negotiations, to respect agreements

reached during the talks, to recommit themselves to democratic principles, to take part in the elections and to resolve outstanding issues by peaceful means only;

19. Strongly urges the international community, following the adoption by the General Assembly of resolution 48/1 on 8 October 1993, to respond generously and positively to the appeal by the people of South Africa for assistance in the economic reconstruction of their country and to ensure that the new South Africa begins its existence on a firm economic basis;

20. Supports the efforts of the Secretary-General, together with all the parties concerned, to implement effectively plans for the role of the United Nations in the election process in coordination with the observer missions of the Organization of African Unity, the Commonwealth, the European Union and observers from non-governmental organizations;

21. Urges the Government of South Africa, together with all parties, to create a fair and impartial judiciary and to rehabilitate, develop and train a new police force whose primary role would be to maintain law and order;

22. Calls upon the Centre for Human Rights to respond at the appropriate time, as guided by the Secretary-General, to the needs of the changing situation in South Africa during the period of transition, in accordance with General Assembly resolutions 47/116 A of 18 December 1992 and 48/159 A of 20 December 1993;

23. Calls for the definitive abolition of sections 29 and 50 of the Internal Security Act and other remaining repressive regulations such as the Public Safety Act of 1953 which are inconsistent with the new democratic society of South Africa;

24. Requests the Centre for Human Rights to place at the disposal of the new Government and the people of South Africa its experience in advisory services to assist in the preparation of a programme of technical cooperation in the field of human rights aimed at promoting respect for all human rights, overcoming the legacy of apartheid, raising the capacity of members of the disadvantaged communities, with particular attention to women

and children, and strengthening democratic institutions, especially through education, training and information;

25. Requests the bodies and agencies of the United Nations system to contribute to the preparation and implementation of a programme of technical cooperation in the field of human rights and social and economic development, including the programme of the International Labour Organisation, in order to change the labour laws so that they are in conformity with the international labour standards;

26. Requests the Ad Hoc Working Group of Experts to continue, in cooperation with the Special Committee against Apartheid and other investigatory and monitoring bodies, to examine the situation regarding the violations of human rights in South Africa including, in particular, reports of torture, ill-treatment and deaths of detainees, infringements of trade-union rights, as well as the situation of women and children;

27. Renews its request to the Government of South Africa to allow the Ad Hoc Working Group of Experts to visit South Africa to gather information from individuals and organizations in order to ascertain the situation of human rights in South Africa, in such a manner that:

(a) The Ad Hoc Working Group of Experts would be guaranteed free and confidential access to any individual, organization, prisoner or ex-prisoner, detainee or ex-detainee;

(b) The Government of South Africa would provide a firm undertaking that any person or organization providing evidence would be granted immunity from any State action as a result thereof;

28. Requests the Ad Hoc Working Group of Experts to submit a preliminary report to the General Assembly at its forty-ninth session and its final report to the Commission on Human Rights at its fifty-first session."

12. At its 31st meeting, the representative of Tanzania introduced a revised draft resolution (E/CN.4/1994/L.12/Rev.1) with the same sponsors as draft resolution E/CN.4/1994/L.12. Subsequently, Australia, Finland, Ireland*,

Iceland*, Norway* and Sweden* joined the sponsors of the revised draft resolution.

13. The representative of Tanzania orally revised the draft resolution as follows:

In the second line of the sixteenth preambular paragraph, the word "Justice" was to be replaced by "Law".

14. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft resolution.

15. The draft resolution was adopted without a vote.

16. For the text as adopted, see chapter II, section A (resolution 1994/10).

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